RECENT IMPORTANT DECISIONS

ACKNOWLEDGMENT—WHO MAY TAKE—STOCKHOLDER.—A wife acknowledged a mortgage of the homestead before a notary public who was a stockholder and officer in the corporation mortgagee, *Held*, that the mortgage was invalid and subject to be so treated on direct attack. *Jenkins* v. *Jonas Schwab Co.* (1903), — Ala. —, 35 So. Rep. 649. See MICHIGAN LAW REVIEW, Vol. 1, p. 215; vol. 2, pp. 138 and 220.

ACTION FOR DEATH OF CHILD—CONTRIBUTORY NEGLIGENCE.—A minor of eleven years drove a team attached to a two-seated spring wagon to town. Seated on the back seat of the wagon were his mother and six-year-old sister, on the front seat a negro boy and the minor himself. The evidence showed that he attempted to cross the railway track in plain view of a rapidly approaching train. In the collision that followed both mother and daughter were killed. In action by the father as administrator of his daughter's estate to recover damages under the statute for her wrongful death. *Held*, That where a father through his agent, the custodian of a child, is guilty of negligence contributing to cause its death, he cannot recover damages for its death in an action for his own benefit. *Richmond F. & P. Ry. Co.* v. *Martin's Administrator* (1903), — Va. —, 45 S. E. Rep. 894.

The authorities all agree that there can be no recovery where the action is brought in the name of and for the benefit of one whose negligence has contributed to the accident. The policy of the law is not to allow a recovery for the benefit of a wrong doer, and this should be applied as well to actions in the name of another for the benefit of those who may have contributed to the wrong. KINKEAD ON TORTS, 474; BEACH ON CONTRIBUTORY NEGLIGENCE, sec. 131. *Bellefontaine Ry. Co.* v. *Snyder*, 24 Ohio St. 670. When the action is by the administrator it is generally held that he is only a trustee or a mere nominal party and that the action will be defeated by the contributory negligence of the beneficiaries. BOOTH ON STREET RAILWAYS, sec 391. *Stutzel* v. *St. Paul City Ry.*, 47 Minn. 543, 50 N. W. Rep. 690. *Chicago Cy. Ry.* v. *Robinson*, 127 Ill. 9, 18 N. E. Rep. 772, 4 L. R. A. 126, 11 Am. St. Rep. 87. *Wymore* v. *Mahaska Co.*, 78 Ia. 396, 43 N. W. Rep. 264, 6 L. R. A. 545, 16 Am. St. Rep. 449 is to be distinguished on the ground that the statute gives a right of action to the estate of the minor and one to the next of kin, and the action in that case was by the next of kin.

ADVERSE POSSESSION—COMPUTATION OF TIME—LITIGATION IN LAND OFFICE.—Russell Sage, assignee in trust of the Hastings and Dakota Railway Co., brought an action of ejectment against one Michael Rudnick to recover possession of some land, situated in Swift County, Minn., the title to which had been litigated in the General Land Office of U. S. from 1883 to 1891 between plaintiff and another road, each claiming title through their grants; when in 1891 the commissioner determined plaintiff was the owner. Rudnick claims title by adverse possession, having occupied the land since May, 1877, under claim of ownership. *Held*, That the statute of limitations did not run from 1883 to 1891. *Sage* v. *Rudnick* (1904), — Minn. —, 98 N. W. Rep. 89.

The Court based its decision upon the case of the *St. Paul Ry. Co.* v. *Olson*, 87 Minn. 117, where the defendant had been a party to the liti-

gation in the Land Office and then tried to set up the statute of limitations, but the court said this would be inequitable. *Van Wyck* v. *Knevals*, 106 U.S. 360, and *St Paul,etc.Ry.*v.*Phelps*,137 U.S.528 both hold that there is a grant in praesenti when the map of definite location is filed, which was June, 1867 in this case, and that a deed or patent is not necessary to give legal title. This being the case there is no reason why the Dakota road should not have defended its title against Rudnick.

BANKRUPTCY—HOMESTEAD—JURISDICTION OF BANKRUPTCY COURT.—Certain real property of a bankrupt was set aside as a homestead and as exempt under the laws of th state. A creditor holds a note of the bankrupt, on which the balance remaining unpaid has been allowed as a debt in the court of bankruptcy proceedings. According to the state laws as to debts contracted prior to the acquisition of the property constituting the homestead, the homestead in question is liable for the payment of the note. On petition of the creditor to the bankrupt court to take possession and sell the same and apply the proceeds to the extinguishment of the balance due on the note. *Held*, the bankrupt court is without power to so act. *In re Ingram* (1903) — C. C. A. 8th Circ —, 125 Fed. 913.

The right of the petitioner to have the homestead subjected to the payment of his claim, existing in his favor only, did not cause the title to vest in the trustee in bankruptcy, and so the bankrupt court was without power to order the sale. A creditor, like the petitioner, must seek his relief under the local laws in the state courts; and if a discharge of the bankrupt from all his debts, when granted by the bankrupt court will stand in the way of his obtaining relief, that court, after administering upon all the assets subject to its control, may withhold the bankrupt's discharge for a reasonable time to enable the creditor to assert his rights in the proper forum. For precedent, see *Lockwood* v. *Exchange Bank*, 190 U. S. 294, 23 Sup. Ct. 751, 47 L. Ed.—See also *In re Bass*, 3 Woods 382, Fed. Cas. No. 1,091; *In re Camp*, 91 Fed. 745. But see *In re Woodruff*, 96 Fed. 317.

CHATTEL MORTGAGES — UNIDENTIFIED NUMBER AMONG A GREATER NUMBER OF LIKE ARTICLES—VALIDITY.—A mortgage of 36 head of yearling cattle, located on a definitely described farm, was made and recorded. When the mortgage was given there were, on said farm, 44 head of cattle of the same description as that contained in the mortgage. Subsequently, the mortgagor sold 18 of the cattle to a third person, before the mortgaged 36 head had been separated or identified. The purchaser of the 18 head was made a party to an action between the mortgagee and mortgagor, in which the mortgagee sought to enforce its lien upon the cattle described in the mortgage, and it was *Held*, that the mortgage was valid, as against such purchaser, to the number of animals specified in the mortgage—that the purchaser had a right to buy, free from the mortgage, any eight of the cattle, but no more. *Sparks* v. *Deposit Bank of Paris et. al.* (1904), — Ky. —, 78 S. W. 171,

This holding is opposed to the general rule that a mortgage of a specified number of articles out of a larger number is void for uncertainty, as against third persons acquiring adverse rights, when the particular articles intended to be conveyed are not separated or designated in any way, so that they can be distinguished from others of the same kind. JONES ON CHATTEL MORTGAGES (4th ed.), § 56; AM. & ENG. ENCYC. OF LAW, V, 963; note to *Oxsheer* v. *Watt*, 66 Am. St. Rep. 862: monographic note to *Barrett* v. *Fish*, 14 Am. St. Rep. 243; *Parker* v. *Chase*, 62 Vt. 206; *Richardson* v. *Alpena Lumber*